

Montana State Legislature

2013 Session

Additional Documents include:

- * Business Report**
- * Roll Call attendance**
- * Standing Committee Reports,**
- * Table Bills, Fiscal reports etc.**
- * Roll Call Votes**
- * Witness Statements**
- * Informational items**
- * Visitor Registrations**
- * Any other Documents;**
 - ~ Petitions if any?**
 - ~ Any and all material handed in after the meeting end.**

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BUSINESS REPORT
MONTANA SENATE
63rd LEGISLATURE - REGULAR SESSION
SENATE JUDICIARY COMMITTEE

Date: Thursday, March 28, 2013
Place: Capitol

Time: 9:00 AM
Room: 303

BILLS and RESOLUTIONS HEARD:

HB 391 - Requiring parental consent prior to an abortion for a minor - Rep. Gerald (Jerry) Bennett

EXECUTIVE ACTION TAKEN:

SB 387 - DO PASS AS AMENDED
SB 37 - TABLED

Comments:



SEN Terry Murphy, Chair

MONTANA STATE SENATE

2013 JUDICIARY COMMITTEE

ROLL CALL

DATE: 3/28/13

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
CHAIRMAN, SENATOR TERRY MURPHY	/	
VICE CHAIRMAN, SENATOR SCOTT SALES	/	
SENATOR SHANNON AUGARE		/
SENATOR ANDERS BLEWETT	/	
SENATOR SCOTT BOULANGER	/	
SENATOR JOHN BRENDEN		/
SENATOR ROBYN DRISCOLL	/	
SENATOR JENNIFER FIELDER	/	
SENATOR LARRY JENT	/	
SENATOR CLIFF LARSEN	/	
SENATOR CHAS VINCENT	/	
SENATOR ART WITTICH	/	

BILL TABLED NOTICE

SENATE JUDICIARY COMMITTEE

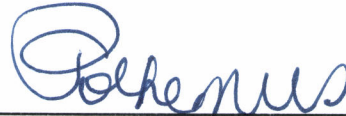
The **SENATE JUDICIARY COMMITTEE** TABLED

SB 37 - Declaring conceal weapon permit app. info as confidential criminal justice info - Sen. Terry Murphy

by motion, on **Thursday, March 28, 2013** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).



(For the Committee)



(For the Secretary of the Senate)

10:35 / 3/28

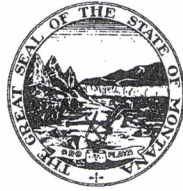
(Time)

(Date)

March 28, 2013 (10:05am)

Pam Schindler, Secretary

Phone: 406-444-4891



SENATE STANDING COMMITTEE REPORT

March 28, 2013

Page 1 of 3

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 387** (first reading copy -- white) **do pass as amended.**

Signed: *Terry Murphy*
Senator Terry Murphy, Chair

And, that such amendments read:

1. Title, page 1, line 13.

Following: ";"

Insert: "CLARIFYING THE STANDING REQUIREMENT FOR THE FILING OF
ETHICS COMPLAINTS;"

Following: "SECTIONS"

Insert: "2-2-136,"

2. Page 2.

Following: line 28

Insert: "Section 4. Section 2-2-136, MCA, is amended to read:

"2-2-136. **Enforcement for state officers, legislators, and state employees -- referral of complaint involving county attorney.** (1) (a) A person alleging a violation of this part by a state officer, legislator, or state employee may file a complaint with the commissioner of political practices if the person has standing to file the complaint. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The commissioner also has jurisdiction over complaints against a county attorney that are referred by a local government review panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to 2-2-144(6). The commissioner may request additional information from the complainant or the person who is the subject of the complaint to make an initial determination of whether the complaint states a potential violation of this part.

(b) The commissioner may dismiss a complaint when the person who filed the complaint has failed to demonstrate standing

Committee Vote:

Yes 7, No 5

Fiscal Note Required ☐

or may dismiss a complaint that is frivolous, does not state a potential violation of this part, or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states a potential violation of this part. If the issues presented in a complaint have been addressed and decided in a prior decision and the commissioner determines that no additional factual development is necessary, the commissioner may issue a summary decision without holding an informal contested case hearing on the complaint.

(c) Except as provided in subsection (1)(b), if the commissioner determines that the complaint states a potential violation of this part, the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based upon the record established before the commissioner.

(d) A person has standing to allege a violation when the person:

(i) alleges a past, present, or threatened injury to a property right or a civil right; and

(ii) alleges an injury that is distinguishable from an injury to the public generally, although the injury does not need to be exclusive to the person alleging the injury.

(2) (a) Except as provided in subsection (2)(b), if the commissioner determines that a violation of this part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more than \$1,000.

(b) If the commissioner determines that a violation of 2-2-121(4)(b) has occurred, the commissioner may impose an administrative penalty of not less than \$500 or more than \$10,000.

(c) If the violation was committed by a state employee, the commissioner may also recommend that the employing state agency discipline the employee. The employing entity of a state employee may take disciplinary action against an employee for a violation of this part, regardless of whether the commissioner makes a recommendation for discipline. The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur.

(3) A party may seek judicial review of the commissioner's decision, as provided in chapter 4, part 7, of this title, after a hearing, a dismissal, or a summary decision issued pursuant to subsection (1)(b).

(4) Except for records made public in the course of a hearing held under subsection (1) and records that are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint are confidential documents and are not open for public inspection. The complainant and the person who is the subject of the complaint shall maintain the

confidentiality of the complaint and any related documents released to the parties by the commissioner until the commissioner issues a decision. However, the person who is the subject of a complaint may waive, in writing, the right of confidentiality provided in this subsection. If a waiver is filed with the commissioner, the complaint and any related documents must be open for public inspection. The commissioner's decision issued after a hearing is a public record open to inspection.

(5) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects and status of the case.

(6) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."

Renumber: subsequent sections

3. Page 3, line 26 through line 28.

Strike: subsection (1) in its entirety

Insert: "(1) A corporation may not make a contribution to a candidate or candidate's campaign and may not make a contribution to a political committee, including but not limited to a political party committee, unless the political committee segregates the contribution in an account that is separate from those accounts used to make direct contributions to candidates and candidates' campaign committees and the contribution is used as an independent expenditure.

(2) A candidate or candidate's committee may not accept or receive a corporate contribution described in subsection (1)."

Renumber: subsequent subsections

4. Page 10, line 11.

Following: "record"

Strike: remainder of line 11 through "campaign" on line 12

5. Page 10, line 14.

Following: "record"

Strike: "or" through "campaign" on line 15

- END -

MONTANA STATE SENATE

ROLL CALL VOTE

2013 JUDICIARY COMMITTEE

DATE 3/28/13 BILL NO SB37 MOTION NO. 1

MOTION:

table

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	<u>—</u>		
SENATOR JOHN BRENDEN	<u>—</u>		<u>—</u>
SENATOR JENNIFER FIELDER	<u>—</u>		
SENATOR CHAS VINCENT	<u>—</u>		<u>—</u>
SENATOR SCOTT BOULANGER	<u>—</u>		
SENATOR ART WITTICH	<u>—</u>		
SENATOR SHANNON AUGARE	<u>—</u>		<u>—</u>
SENATOR ANDERS BLEWETT	<u>—</u>	<u>—</u>	
SENATOR ROBYN DRISCOLL	<u>—</u>		
SENATOR LARRY JENT	<u>—</u>		
SENATOR CLIFF LARSEN	<u>—</u>		
CHAIRMAN, SENATOR TERRY MURPHY	<u>—</u>		

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MONTANA STATE SENATE

ROLL CALL VOTE

2013 JUDICIARY COMMITTEE

DATE 3/28/13 BILL NO SB387 MOTION NO. 2

MOTION:

amendment

38701.9, b

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	<u>—</u>		
SENATOR JOHN BRENDEN	<u>—</u>		<u>—</u>
SENATOR JENNIFER FIELDER	<u>—</u>		
SENATOR CHAS VINCENT	<u>—</u>		
SENATOR SCOTT BOULANGER	<u>—</u>		
SENATOR ART WITTICH	<u>—</u>		
SENATOR SHANNON AUGARE	<u>—</u>		<u>—</u>
SENATOR ANDERS BLEWETT	<u>—</u>		
SENATOR ROBYN DRISCOLL	<u>—</u>		
SENATOR LARRY JENT	<u>—</u>		
SENATOR CLIFF LARSEN	<u>—</u>		
CHAIRMAN, SENATOR TERRY MURPHY	<u>—</u>		

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MONTANA STATE SENATE
ROLL CALL VOTE
2013 JUDICIARY COMMITTEE

DATE 5/28/13 BILL NO SB387 MOTION NO. 3

MOTION:

Amendment

387.03

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	<u>/</u>		
SENATOR JOHN BRENDEN	<u>-</u>		<u>-</u>
SENATOR JENNIFER FIELDER	<u>-</u>		
SENATOR CHAS VINCENT	<u>-</u>		
SENATOR SCOTT BOULANGER	<u>-</u>		
SENATOR ART WITTICH	<u>-</u>		
SENATOR SHANNON AUGARE	<u>-</u>		<u>-</u>
SENATOR ANDERS BLEWETT	<u>.</u>	<u>/</u>	
SENATOR ROBYN DRISCOLL	<u>/</u>		
SENATOR LARRY JENT		<u>/</u>	
SENATOR CLIFF LARSEN		<u>/</u>	
CHAIRMAN, SENATOR TERRY MURPHY	<u>/</u>		

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MONTANA STATE SENATE
ROLL CALL VOTE
2013 JUDICIARY COMMITTEE

DATE 3/28/13 BILL NO SB387 MOTION NO. 4

MOTION:

Amendment

387.02

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	—		
SENATOR JOHN BRENDEN	—		✓
SENATOR JENNIFER FIELDER	✓		
SENATOR CHAS VINCENT	—		
SENATOR SCOTT BOULANGER	—		
SENATOR ART WITTICH	—		
SENATOR SHANNON AUGARE	—		✓
SENATOR ANDERS BLEWETT	✓		
SENATOR ROBYN DRISCOLL		✓	
SENATOR LARRY JENT		—	
SENATOR CLIFF LARSEN		—	
CHAIRMAN, SENATOR TERRY MURPHY	—		

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MONTANA STATE SENATE

ROLL CALL VOTE

2013 JUDICIARY COMMITTEE

DATE 3/28/13 BILL NO SB 387 MOTION NO. 5

MOTION:


Do Pass As Amended

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
VICE CHAIRMAN, SENATOR SCOTT SALES	<u>—</u>		
SENATOR JOHN BRENDEN	<u>—</u>		<u>—</u>
SENATOR JENNIFER FIELDER	<u>—</u>		
SENATOR CHAS VINCENT	<u>—</u>		
SENATOR SCOTT BOULANGER	<u>—</u>		
SENATOR ART WITTICH	<u>—</u>		
SENATOR SHANNON AUGARE		<u>—</u>	<u>—</u>
SENATOR ANDERS BLEWETT		<u>—</u>	
SENATOR ROBYN DRISCOLL		<u>—</u>	
SENATOR LARRY JENT		<u>—</u>	
SENATOR CLIFF LARSEN		<u>—</u>	
CHAIRMAN, SENATOR TERRY MURPHY			

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SENATE PROXY

I, Senator Brenden, hereby authorize Senator
SALES to vote my proxy before the
 Senate JUDICIARY meeting held on
 , 2013.



Senator Signature (Sen. John Brenden)

3/28/13 Date

Said authorization is as follows: *(mark only one)*

- ☒ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

[illegible]

SENATE PROXY

I, Senator Vincent, hereby authorize Senator
Sales to vote my proxy before the Senate
meeting held on _____, 2013.

C. V. Vint
Senator Signature

3/28/13
Date

Said authorization is as follows: *(mark only one)*

- ☒ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

[illegible]

SENATE PROXY

I, Senator Shannon C. Lysare, hereby authorize Senator ARSEN to vote my proxy before the Senate meeting held on _____, 2013.

Senator Signature

Date _____

Said authorization is as follows: *(mark only one)*

- ☒ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

[illegible]

Wm. D. Brewster
1854

Chas. J.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Thursday, March 28, 2013

HB 391 - Requiring parental consent prior to an abortion for a minor

Sponsor: Rep. Gerald (Jerry) Bennett

PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

LEGAL REVIEW NOTE

LC#: LC0881, To Legal Review Copy, as of
January 18, 2013

Short Title: Requiring parental consent prior to an
abortion for a minor

Attorney Reviewers: Alexis Sandru/Todd
Everts

Date: January 20, 2013



CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.

Legal Reviewer Comments:

LC0881, as drafted, may raise potential constitutional issues concerning Montana's constitutional guarantees of equal protection, Article II, section 4, and the right of privacy, Article II, section 10.

Article II, section 4, of the Montana Constitution provides that "[n]o person shall be denied the equal protection of the laws". Unlike the United States Constitution, which does not provide an explicit right of privacy, Article II, section 10, of the Montana Constitution expressly provides:

The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

The Montana Supreme Court has observed that Montana's right of privacy is one of the most stringent protections of the right of privacy in the United States and is more strict than the right of privacy afforded under the United States Constitution. *St. v. Burns*, 253 Mont. 37, 40, 830 P.2d 1318, 1320 (1992).

Article II, section 15, of the Montana Constitution guarantees this same right of privacy to minors:

The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.

LC0881 requires that before a minor can have an abortion, the minor must obtain parental consent from a parent or legal guardian by either obtaining the notarized written consent of a parent or legal guardian, obtaining a judicial waiver, or obtaining a notarized waiver from a parent or legal guardian. LC0881 requires the Department of Public Health and Human Services to create a consent form for use in obtaining notarized parental consent. The form includes a detailed list of disclosures related to the risk and hazards associated with the planned abortion procedures that a minor is required to individually initial.

Because the right of privacy is a fundamental right, legislation that infringes on the exercise of the right of privacy must be justified by a compelling state interest and must be narrowly tailored to effectuate only that compelling interest. *Armstrong v. St.*, 1999 MT 261, ¶ 34, 296 Mont. 361, 989 P.2d 364. Similarly, courts in Montana apply a strict scrutiny test when reviewing legislation for equal protection issues if the legislation impacts a fundamental right. *St. v. Davison*, 2003 MT 64, ¶ 11, 314 Mont. 427, 67 P.3d 203.

In *Armstrong v. St.*, the Montana Supreme Court struck down the "physician only" provisions of the Montana Abortion Control Act, Title 50, chapter 20, MCA, holding that the procreative autonomy component of personal autonomy is protected by Montana's right of privacy, which "broadly guarantees each individual the right to make medical judgments affecting her or his bodily integrity and health in partnership with a chosen health care provider free from interference of the government". *Armstrong*, ¶ 75. Following *Armstrong*, the First Judicial District Court, declared that portions of the Montana Abortion Control Act involving informed consent and a woman's right to know were unconstitutional under Article II, section 10, of the Montana Constitution and permanently enjoined those provisions. *Planned Parenthood of Missoula v. St.*, No. BDV 95-722, First Judicial District Court Lewis and Clark County (Dec. 29, 1999). Similarly, in *Wicklund v. St.*, the First Judicial District Court determined that the parental notice provisions of the Montana Abortion Control Act infringed upon, rather than enhanced, the rights of pregnant minors and that no compelling rationale existed for restrictive abortion legislation on minors. The *Wicklund* Court further determined that parental notification provisions violated the Montana Constitution's guarantee of equal protection of the law because the provisions created unequal and unfair application to pregnant minors who wanted to terminate their pregnancies versus pregnant minors who did not wish to do so. *Wicklund v. St.*, No. ADV 97-671, First Judicial District Court, Lewis and Clark County (Feb. 25, 1999).

In light of the foregoing precedent, LC0881, as drafted, may raise a constitutional conformity issue regarding the infringement upon a minor's right to privacy, specifically the right to procreative autonomy. In addition, a potential constitutional conformity issue may exist regarding whether the parental consent requirement applies unequally and unfairly to minors who

wish to terminate their pregnancies.

Requester Comments: See attached

SPONSOR'S COMMENTS IN RESPONSE TO THE LEGAL REVIEW

LC#: LC0881

Short Title: Generally revise laws related to health and safety.

Date: January 22, 2013

ADDITIONAL
DOCUMENTS

While the Judicial branch looks to statutes, the Constitution, and case law when making decisions, the Legislative branch, the branch closest to the people, looks to the people themselves.

Opponents of Legislative Referendum 120 (LR-120), the recently passed ballot referendum requiring children under 16 to notify at least one parent before having an abortion, used the same arguments as those above in the 2011 legislative session. They were ignored by the voters, and LR-120 was passed in November 2012 by 71% to 29%.

The overarching principle is that the will of the people should never be held subservient to their own Constitution. While the Constitution was ratified by 50.5%, LR-120 was "ratified" by 71%. The intent of the people is clear.

With regard to *Wicklund v. St.* and the broad interpretation of the Constitution's privacy clause in *Armstrong v. St.*, there exists 2 possibilities: 1) The court interpreted the Constitution correctly, in which case it must be amended to comport with the people's wishes as expressed in the vote on LR-120, or 2) The more likely case; the Supreme Court's broad interpretation of the privacy clause in *Armstrong* went beyond the wishes of the people, especially as it was then coupled with Article II, section 15 and applied to the rights of minors in the *Wicklund* case. Either way, 71% of the electorate, in a direct vote of the people, agreed with the "Legislative findings" and the "compelling interest" statements embedded in LR-120.

It is important to remember that courts can and do make mistakes. No one believes that *Dred Scott* was correctly decided, and more recently, many opponents of this bill decry the U.S. Supreme Court's holdings in the landmark *Citizens United* case. Montana case law notwithstanding, it is clearly the desire of the vast majority of Montanans that parents be allowed to be involved in decisions regarding their children's healthcare, regardless of the medical procedure. It is also important to remember that the discussion surrounding the right to privacy at the Constitutional Convention focused on electronic eavesdropping by the government on its citizens.

Regarding parental involvement in medical procedures affecting their children, the people have spoken, government should be required to show a compelling state interest before placing itself squarely between parents and their children.